

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

OGALLALA COMMUNITY HOSPITAL )	
AND HEALTH FOUNDATION, )	
) )	
Plaintiff, ) )	7:04CV5012
) )	
v. ) )	
) )	
VITZTUM COMMERCIAL FLOORING, ) )	ORDER
INC., a Kansas corporation, ) )	
et al., ) )	
) )	
Defendants. ) )	
) )	
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VITZTUM COMMERCIAL FLOORING, ) )	
INC., and AMCO INSURANCE ) )	
COMPANY, an Iowa corporation, ) )	
surety, ) )	
) )	
Third-Party Plaintiffs, ) )	
) )	
v. ) )	
) )	
DEPENDABLE CHEMICAL CO., INC., ) )	
and MANKINI VINYL ) )	
INSTALLATION, ) )	
) )	
Third-Party Defendants. ) )	
) )	

This matter is before the Court concerning its review of the detailed privilege log and the documents therein listed submitted by third-party defendant Dependable Chemical Co., Inc. ("Dependable"). Because Dependable asserts the work-product privilege as a bar to discovery, they bear the initial burden of establishing a factual basis for their assertion. See *St. Paul Reinsurance Co. v. Commercial Fin. Corp.*, 197 F.R.D. 620, 627 (N.D. Iowa 2000). The party asserting the privilege meets this

burden by providing the reviewing court with a detailed privilege log and explanatory affidavit of counsel setting forth a factual basis for the privilege. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 925 (8th Cir. 1997). While Dependable has submitted the detailed privilege log, Dependable's counsel has not submitted his or her explanatory affidavit setting forth a factual basis for the privilege as required. Counsel's affidavit is required before the Court can complete its review of the alleged privileged documents. Accordingly,

IT IS ORDERED that third-party defendant Dependable Chemical Co., Inc., shall submit the required explanatory affidavit of counsel setting forth a factual basis for the privilege; said party shall have until July 7, 2006, to submit the requested affidavit.

DATED this 26th day of June, 2006.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court